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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 211

CENTAUR CONSTRUCTION COMPANY, INC.,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority and dissenting opinions in the Court of Claims (R. 26-30) are reported at 83 F. Supp. 351.

JURISDICTION

The judgment of the Court of Claims was entered on April 4, 1949 (R. 30). A motion for a new trial was filed on April 25, 1949, and overruled on May 2, 1949 (R. 30). The petition for a writ of certiorari was filed on July 26, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1255.

QUESTION PRESENTED

Whether petitioner's claim, created by the Relief Act (Act of August 7, 1946, c. 864, 60 Stat. 902 *infra,* pp. 9-10), and terminated under that Act upon petitioner's failure to sue within six months of administrative denial, was revived by the amendment of June 25, 1948 (c. 646, 62 Stat. 869, 992, *infra,* pp. 10-11).

STATUTES INVOLVED

Pertinent statutory provisions are set forth in the Appendix at pp. 9-11.

STATEMENT

So far as material here, petitioner's allegations in the court below, uncontroverted by respondent's motion to dismiss, were as follows:

On or about March 1, 1941, petitioner, a New York corporation engaged in construction work and engineering, entered into a written contract with the United States for the construction of shipyards and dry dock facilities at the United States Coast Guard Depot, Curtis Bay, Maryland (R. 1, 6). Due to the increased cost of labor and materials resulting from the rearmament program prior to December 7, 1941, and from the demands of war thereafter, petitioner's expenditures in performance of the contract substantially exceeded its expectations (R. 7-9, 10-15).

In an application to the Coast Guard's contracting officer, dated October 26, 1942, petitioner, claiming losses due to the unexpectedly high cost

of performing its contract, sought relief under the First War Powers Act[1] (R. 16). The Application was denied, and, on appeal by petitioner to the Secretary of the Navy, this determination was affirmed (R. 16).

On February 7, 1947, petitioner filed a claim for $311,421.78, its alleged contract losses, with the Commandant of the United States Coast Guard, relying now upon the Act of August 7, 1946 (c. 864, 60 Stat. 902-903, *infra,* pp. 9-10; referred to herein, as in the petition for certiorari, as the "Relief Act") (R. 16, 18-24). On April 21, 1947, this claim was denied on the ground that it had already been finally adjudicated by the Secretary of the Navy in his disposition of the application of October 26, 1942 (R. 16, 24-25).

The Relief Act conferred upon a contractor dissatisfied with administrative action on his claim for relief "the right within six months to file a petition with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim * * *." This

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[1] Act of December 18, 1941, c. 593, Title II, § 201, 55 Stat. 839, 50 U. S. C. App. 611, providing in pertinent part: "The President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort, in accordance with regulations prescribed by the President for the protection of the interests of the Government, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deems such action would facilitate the prosecution of the war * * *."

provision was amended by the Act of June 25, 1948 (*infra*, pp. 10-11) to give the Court of Claims jurisdiction over such suits and to conform them to ordinary Tucker Act proceedings by limiting concurrent jurisdiction of the district courts to $10,000.

On September 27, 1948, almost seventeen months after rejection of its claim of February 7, 1947, petitioner brought this action seeking relief under the foregoing statute (R. 1-17). Granting respondent's motion to dismiss, the court held (two judges dissenting) that petitioner's right of action, created by the Relief Act, had expired upon petitioner's failure to comply with the Act's requirement that suit be brought within six months after administrative disposition of its claim (R. 26-29).

ARGUMENT

As petitioner points out (Pet. 3), its application to the Coast Guard Commandant for relief from its contract losses was made pursuant to the Relief Act of August 7, 1946. That Act prescribed a limit of six months on the period during which the right to court review would be available. Its claim having been denied on April 21, 1947, petitioner had until October 21, 1947, to sue in a district court. For reasons neither known nor relevant here, petitioner did not bring this action until September 27, 1948, almost seventeen months after denial of its claim and over eleven months after its right to sue had expired. We submit that nothing in the petition for certiorari casts the slightest

doubt on the correctness of the holding below that this suit was barred.

1. Much of petitioner's attack on the judgment below (Pet. 14-17) amounts to a contention that the amendment of June 25, 1948, had the effect of reviving claims already extinguished by the Relief Act's six-month limitation.[2] The controlling portion of that statute, with the language added by the amendment italicized, reads as follows:

> Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition *with the Court of Claims or, if the claim does not exceed $10,000 in amount or suit has heretofore been brought or is brought within thirty days after the enactment of this amendatory act,* with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; * * *

On the face of the statute, it appears that the amendment provides merely that cases involving over $10,000 must be brought in the Court of Claims instead of the district courts; the six months limitation is retained without alteration. The language

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[2] Statutory limitations of the type in question are not merely "procedural," but go to the substance of the rights simultaneously created and limited. "Under such a statute the lapse of time not only bars the remedy but destroys the liability." *Phillips Co.* v. *Grand Trunk Western Ry. Co.*, 236 U.S. 662, 667; *Kansas City So. Ry.* v. *Wolf*, 261 U.S. 133; *William Danzer Co.* v. *Gulf R. R.*, 268 U.S. 633.

and history of the amendment[3] make clear that the amendment's only purpose was to bring jurisdiction under the Relief Act into conformity with jurisdictional provisions generally applicable to suits against the United States. As necessary corollaries of this change, the amendment makes provision for a period of transition during which suits for over $10,000 may be brought (for thirty days) or continued in the district courts, and permits transfer of pending suits from the district courts to the Court of Claims. There is nothing in the amendatory language to suggest even remotely that Congress intended the re-creation of claims already terminated under the predecessor law, which differed only in providing for another forum. Cf. *Fullerton Co.* v. *Northern Pacific,* 266 U.S. 435, 437; *Link* v. *Receivers of Seaboard Air Line Ry. Co.,* 73 F. 2d 149 (C.A. 4).

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[3] S. Rep. No. 1559, 80th Cong., 2d sess., explaining the amendment as follows (at p. 14): "Public Law No. 657 of the Seventy-ninth Congress [the Relief Act of August 7, 1946] provides for the determination of war claims incurred without fault or negligence where any form of contract relief had been requested during the war and despite former administrative denial or settlement thereof. Jurisdiction and venue of cases in which amounts claimed exceed $10,000 properly belong in the Court of Claims to accord with existing statutes and legislative policy. (See 28 U.S.C. 41 (20), 1946 ed.). Moreover, in some cases jurisdiction may exist under both that statute and the general jurisdiction respecting claims against the United States so that cases must either be split up for filing in different courts or the parties must elect to forego a possible basis for relief. Cases are just beginning to arise under the statute. The suggested revision amply protects those whose cases have already been instituted in the district courts and properly provides for de novo determination by the Court of Claims notwithstanding any prior action by the district courts."

Petitioner's reliance upon the thirty day clause is plainly ill-founded. For that applies only to suits brought in the district courts, whereas this suit was instituted in the Court of Claims. In any event, that clause merely afforded a period of grace during which suits for over $10,000 could continue to be brought in the district courts; it did not create any exception to the unchanged provision that suits must be brought within six months of agency action.

2. Petitioner suggests (Pet. 12-14) that, since "the subject matter of the action is contracts," the general statute (28 U.S.C. 2501, *infra,* p. 11) limiting the jurisdiction of the Court of Claims to claims sued upon within six years of accrual applies. But petitioner sued, not upon its contract, but upon a statute affording relief from the contract terms under certain explicit conditions. One of these conditions, already discussed, was that suit be brought within six months of administrative denial of relief. This specific provision for cases under a special statute clearly is controlling as against the general time limitation. *United States* v. *A. S. Kreider Co.,* 313 U.S. 443; *Christie-Street Commission Co.* v. *United States,* 136 Fed. 326 (C.A. 8). Petitioner's alleged right, destroyed by failure to sue within the prescribed period, is obviously not revived by the fact that the Court of Claims has power to adjudicate subsisting claims up to six years after their inception. *United States* v. *St. Louis, S. F. & T. Ry. Co.,* 270 U.S. 1,

upon which petitioner primarily relies, held only that the special statute involved was not to be applied retroactively, and accordingly has no bearing here.

3. Petitioner asserts (Pet. 5-6) that review of the decision below is warranted by the fact that a number of cases under the Relief Act are now pending before the Court of Claims. But the fact that there are other suits under the Relief Act is, of course, no indication that other claimants will let the six-month limitation expire before bringing suit. This suit is the only one so far in which any such situation has arisen.

CONCLUSION

The decision below is correct, and there is no conflict of decisions. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER, 1949.

APPENDIX

The "Relief Act," Act of August 7, 1946, c. 954, 60 Stat. 902-903, provided:

That where work, supplies, or services have been furnished between September 16, 1940, and August 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 (50 U.S.C., Supp. IV, app., sec. 611), such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within sixty days after the date of approval of this Act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminution of anticipated profits) incurred between September 16, 1940, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. Settlement of such claims shall be made or approved in each case by the head of the department or agency concerned or by a central authority therein designated by such head.

* * * * *

SEC. 6. Whenever any claimant under this Act is dissatisfied with the action of a de-

partment or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; and upon the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this Act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision of the court as in other equity cases.

Section 6 of the foregoing Act was amended by Section 37 of the Act of June 25, 1948, c. 646, 62 Stat. 869, 992 to read as follows (Language added by the amendment appears here in italics; four unimportant words omitted in the amendment are bracketed. Except for the changes thus indicated, the original language remains unaltered):

SEC. 6. Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition *with the Court of Claims, or if the claim does not exceed $10,000 in amount or suit has heretofore been brought or is*

brought within thirty days after the enactment of this amendatory act, with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; and upon the filing of such a petition, the court sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this Act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision [of the court] *if it was rendered by a district court or petition the Supreme Court for a writ of certiorari if it was rendered by the Court of Claims*, as in other [equity] cases. *Any case heretofore brought in a district court under this section may, at the election of the petitioner to be exercised within thirty days after the enactment of this amendatory Act, be transferred to the Court of Claims for original disposition in that court.*

28 U.S.C. 2501 provides:

Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed * * * within six years after such claim first accrues.